



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 11, 2013

Ms. Molly Cost  
Assistant General Counsel  
Texas Department of Public Safety  
5805 North Lamar Boulevard, Box 4087  
Austin, Texas 78773-0001

OR2013-04077

Dear Ms. Cost:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 482470 (DPS PIR Nos. 12-4353, 13-0014, and 13-0123).

The Texas Department of Public Safety (the "department") received requests from multiple requestors for information pertaining to a specified shooting incident. You state the department has released or made available some of the requested information in accordance with copyright law. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the information you have submitted to us for review is not responsive to any of the requests for information at issue because it was created after the department received the requests. This ruling does not address the public availability of any information that is not responsive to the requests, and the department is not required to release this information in response to this requests. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

Next, you indicate some of the requested information consists of records of a grand jury. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary, and therefore not subject to the Act. Open Records Decision

No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and therefore are also not subject to the Act. Open Records Decisions Nos. 513 (1988), 411, 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). Thus, to the extent the requested information is held by the department as an agent of the grand jury, it consists of records of the judiciary not subject to disclosure under the Act. To the extent the information does not consist of records of the judiciary, we will address your exceptions to disclosure.

You also inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-01248 (2013). In Open Records Letter No. 2013-01248, we determined the following: the department (1) must withhold some information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code and under section 552.130 of the Government Code, but must release the remaining information subject to section 552.022 of the Government Code; (2) may withhold some information under section 552.108(a)(1) of the Government Code, with the exception of basic information, which the department must release; and (3) must withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code pursuant to the previous determination issued to the department in Open Records Letter No. 2010-12863. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, for the information in the current requests that is identical to the information previously requested and ruled upon by this office, we conclude the department must continue to rely on Open Records Letter No. 2013-01248 as a previous determination and withhold or release that information in accordance with that ruling. *See* Open Records Decision No. 673 at 7-8 (2001).

You assert the remaining responsive information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining responsive information relates to a pending criminal investigation. Based on this representation, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Therefore, the department may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

To conclude, the department is not required to release any of the submitted information that is not responsive to the requests for information. The department is not required to release any of the requested information that the department holds as an agent of the grand jury. The department must continue to rely on Open Records Letter No. 2013-01248 as a previous determination and withhold or release the information subject to that ruling in accordance with that ruling. The department may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 482470

Enc. Submitted documents

c: Three Requestors  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.